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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Michelle Azulay,

Plaintiff,

v.

Good Nite Inn Redlands, Inc., a
California Corporation; and Does
1-10,

Defendants.

Case No. 5:17-cv-00777-PSG-MRW

**Joint Status Report (Rule 26) for
Scheduling Conference**

Date: September 11, 2017
Time: 2:00 p.m.

Honorable Judge Philip S. Gutierrez

Pursuant to Rule 26 of the Federal Rules of Civil Procedure and the
Order Setting Scheduling Conference filed May 19, 2017, the parties hereby
submit the following Joint Report.

1 **I. Brief Factual Summary of the Case and Claims Being Asserted**

2 Plaintiff: Michelle Azulay is a paraplegic. She uses a wheelchair for
3 mobility. Defendant Good Nite Inn Redlands, Inc. owns the real property
4 located at or about 1675 Industrial Park Avenue, Redlands, California.
5 Defendant Good Nite Inn Redlands, Inc. owns the Good Nite Inn Redlands
6 motel (“Motel”) located at or about 1675 Industrial Park Avenue, Redlands,
7 California.

8 Plaintiff was unable to stay at this Motel because Motel personnel
9 refused to accommodate her. Before arriving at the Motel, plaintiff called the
10 Motel to find out if it would be permissible to bring in a medical bed that
11 plaintiff uses. Plaintiff was assured, on several occasions leading up to her
12 actual stay, that it would not be a problem to bring in a medical bed that
13 plaintiff would use during her stay. Plaintiff called the Motel the day before
14 her arrival, to once again make sure that the Motel would make this
15 reasonable accommodation of allowing the plaintiff to bring her medical bed
16 for use during her extended stay at the Motel. On the day of plaintiff’s arrival,
17 and as plaintiff was unloading the bed so that she could place it in the Motel
18 room, the manager of the Motel, Pamela, approached the plaintiff and asked
19 her what she was doing with the bed. Plaintiff recited the various phone calls
20 during the month leading up to her visit, reiterating that Motel personnel
21 assured her that bringing in a medical bed would not be a problem. The
22 manager, after hearing plaintiff’s account, told plaintiff that she would have
23 to investigate this further. The following day, the manager notified the
24 plaintiff that the medical bed would not be allowed and that the plaintiff
25 would have to leave.

26 The defendant’s failure to make reasonable modifications in policies,
27 practices, or procedures, when such modifications were necessary to afford
28 goods, services, facilities, privileges, advantages, or accommodations to

1 plaintiff is a violation of the ADA and is discriminatory against the plaintiff.
2 Defendant violates plaintiff's rights under the American with Disabilities Act
3 and the Unruh Civil Rights Act and therefore, she seeks injunctive relief and
4 the statutory minimum damage award under the Unruh Civil Rights Act.

5 Defendant: Prior to checking into Defendant's motel, Plaintiff never
6 asked for permission to put a medical bed into the room that was rented to
7 her, did not mention she intended to do this, and installed this bed in
8 Defendant's room without Defendant's knowledge or consent. Plaintiff was
9 thereupon advised that she either needed to remove the medical bed from
10 Defendant's room, or check out of the motel. Plaintiff opted to check out, and
11 was thereupon given a refund.

12 Defendant is informed and believes that Defendant does not need a
13 medical bed and, in fact, stayed at the Super 8 motel in Redlands, in a non-
14 accessible room, without a medical bed, from on or about September 8,
15 2016, immediately after checking out of Defendant's motel, until on or about
16 February 1, 2017, when she was evicted for non-payment of rent. Defendant
17 is further informed and believes that Defendant was observed standing in her
18 room by a police officer at the time she was evicted from the Super 8 motel on
19 or about February 1, 2017. As such, Plaintiff was not denied the full and
20 enjoyment of Defendant's facilities as a result of not being allowed to install
21 her own medical bed in Defendant's rooms, as she did not need or use this
22 medical bed when renting a room at the Super 8 motel where she stayed in a
23 non-accessible room for five months immediately after checking out of
24 Defendant's motel.

25 Even if Plaintiff was disabled, and needed a medical bed, which
26 Defendant denies, to allow Plaintiff to bring her own bed into a motel room
27 would put current and future guests, as well as Defendant's employees, at
28 risk of being exposed to mites, lice, and infectious diseases that could be

1 carried on Plaintiff's bed or bedding. Thus, allowing Plaintiff to bring her
2 own bed into Defendant's room would not constitute a reasonable
3 modification to Defendant's policies and practices even if Plaintiff needed
4 this accommodation, which she clearly did not, as evidenced by the fact that
5 immediately upon leaving Defendant's motel, Plaintiff rented a non-
6 accessible room at the Super 8 motel, without bringing in her medical bed,
7 for the next five months.

8 9 **II. Complexity**

10 This case is not complex. There is no need for reference to the
11 procedures set forth in the Manual for Complex Litigation.

12 13 **III. Motions Schedule**

14 Plaintiff: Anticipates filing a motion for partial summary judgment on
15 the issue of duty and liability under the ADA and the Unruh Civil Rights Act.
16 This will occur after the necessary depositions are taken in this case.

17 Defendant: Anticipates filing a motion for summary judgment, or
18 partial summary judgment, on the issues of, *inter alia*, whether (1) Plaintiff is
19 a person with a disability, (2) allowing use of a medical bed by Plaintiff would
20 be "reasonable under the circumstances as well as necessary for that
21 person," *PGA Tour, Inc. v. Martin* (2001) 532 U.S. 661,688, 121 S. Ct. 1879;
22 and (3) allowing Plaintiff to install her own medical bed and bedding in
23 Defendant's motel room would impose undue costs or burdens upon
24 Defendant including, but not limited to, being subjected to liability to
25 Defendant's employees or guests as a result of being exposed to mites, lice,
26 and infectious diseases that could be carried on Plaintiff's bed or bedding.
27 Defendant anticipates such motion will be made following written discovery,
28 and depositions of percipient and expert witnesses.

1 **IV. Settlement**

2 The parties believe that settlement is worth exploring in this case. The
3 parties believe that L.R. 16-15.4, Settlement Procedure Number 2—
4 settlement proceedings before an attorney selected from the Attorney
5 Settlement Officer Panel—should be utilized in this case.

6
7 **V. Trial Estimate**

8 Plaintiff: Anticipates a 2-3 day trial. Plaintiff proposes that the Final
9 Pretrial Conference be set for September 3, 2018 and the Trial date be set for
10 September 18, 2018.

11 Defendant: Estimates a four to five day trial, and proposes a final
12 pretrial conference on September 3, 2018, and trial of September 25, 2018.

13
14 **VI. Additional Parties**

15 Plaintiff: Does not anticipate the need to amend the complaint to add
16 additional defendants. Plaintiff, however, intends to conduct an expert led
17 site inspection to identify each barrier that would affect her type of disability
18 and, then, amend the complaint to ensure that the ADA claim reflects her
19 intention to have all unlawful barrier removed or remediated. This is the two-
20 step process permitted and required by *Doran v. 7-Eleven Inc.*, (9th Cir. 2008)
21 524 F.3d 1034 and *Chapman v. Pier 1 Imports (US) Inc.*, 631 F.3d 939 (9th
22 Cir. 2011).

23 Defendant: Does not anticipate, at this early juncture, of the need to
24 add additional parties.

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1 **VII. Expert Witnesses**

2 The parties do not propose any changes to the timing requirements
3 found under Rule 26(a)(2)(D)&(E) of the Federal Rules of Civil Procedure for
4 the disclosure of expert witnesses.

5
6 **RULE 26 DISCOVERY PLAN**

7 **A. Initial Disclosures**

8 The Parties do not seek any changes to the timing, form or
9 requirements for initial disclosures. The Parties consent to exchange initial
10 disclosures via email by July 12, 2017.

11
12 **B. Discovery**

13 Plaintiff: Will seek discovery related to: (1) the ownership and
14 operation of the business; (2) failure to make reasonable modifications in
15 policies, practices, or procedures; (3) changes or modifications to the policies;
16 (4) the feasibility of providing access to persons with disabilities. The plaintiff
17 intends to propound a set of Interrogatories, Requests for Admission and
18 Requests for Production of Documents; to take the deposition of the
19 Defendants and to conduct an expert site inspection.

20 Defendant: Intends to serve interrogatories, requests for admission,
21 and production requests, and to take percipient and expert depositions. The
22 subjects on which discovery may be needed include, (1) whether Plaintiff is a
23 person with a disability, (2) whether allowing use of a medical bed by Plaintiff
24 would be “reasonable under the circumstances as well as necessary for that
25 person,” *PGA Tour, Inc. v. Martin, supra* 532 U.S. at 688, 121 S. Ct. 1879;
26 and (3) whether allowing Plaintiff to install her own medical bed and bedding
27 in Defendant’s motel room would impose undue costs or burdens upon
28 Defendant including, but not limited to, being subjected to liability to

1 Defendant's employees or guests as a result of being exposed to mites, lice,
2 and infectious diseases that could be carried on Plaintiff's bed or bedding.

3 Defendant also intends to subpoena records from, and take
4 depositions of employees of, (1) the Super 8 motel in Redlands to ascertain
5 whether after checking out of Defendant's motel, Plaintiff stayed at the that
6 motel without a medical bed, in a non-accessible room, for about five months
7 before being evicted for non-payment of rent, as well as their observations of
8 Plaintiff ambulating, and (2) the Redlands police department to determine
9 whether police officers observed Plaintiff ambulating without a wheelchair
10 and/or standing in her room at the Super 8 Redland motel. Defendant also
11 intends to take the deposition of Steven Azulay who was the person who
12 checked into Defendant's motel, as well as the Super 8 motel, and who then
13 stayed with Plaintiff in these facilities.

14
15 The parties do not propose to conduct discovery in phases. The parties
16 consent to receive by e-mail all discovery responses that are capable to be
17 received via electronic means. The parties propose a percipient discovery
18 cutoff date of June 25, 2018, and an expert discovery cutoff date of August
19 25, 2018.

20 21 **C. Electronic Discovery**

22 Plaintiff: Plaintiff hereby requests that, as part of initial disclosures,
23 Defendant produce all surveillance audio and video footage recorded at
24 Defendants' facility; and which is in its possession or under its control.
25 Defendant has an ongoing duty to preserve these video tapes and can no
26 longer destroy or copy over such videotape footage.

27 Defendant: Defendant requests that Plaintiff and Steven Azulay
28 produce all audio and video recordings that occurred while at Defendant's

1 motel, that are in her or his possession, custody, or control. Plaintiff and
 2 Steven Azulay have an ongoing duty to preserve these audio and video
 3 recordings, and can no longer destroy or copy over them.

4 5 **D. Privilege Issues**

6 The parties do not see any issues regarding privilege in this case.

7 8 **E. Changes to Discovery Rules**

9 Plaintiff: Plaintiff requests that rule FRCP 33(a)(1) limits be increased
 10 to 45 for both parties. Plaintiff otherwise requests no deviation from the
 11 Federal and Local Rules.

12 Defendant: Defendant requests that rule FRCP 33(a)(1) limits be
 13 increased to 60 for both parties. Defendant otherwise requests no deviation
 14 from the Federal and Local Rules.

15 16 **F. Other Orders**

17 The parties do not propose that the Court issue any other orders under
 18 Rules 16(b), 16(c) or 26(c) of the Federal Rules of Civil Procedure. The
 19 parties propose the following case management dates:

20

Matter	Date
Last day to Amend Pleadings or Add Parties	3/26/2018
Initial Expert Disclosure	6/15/2018
Percipient Discovery Cutoff Date	6/25/2018
Rebuttal Expert Disclosure	7/11/2018
Discovery Cut Off Date (including experts)	8/25/2018
Last day to conduct settlement conference	7/9/2018
Pretrial Conference	9/3/2018

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Trial	9/25/2018
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Dated: July 11, 2017

CENTER FOR DISABILITY ACCESS

By: /s/Dennis Price
Dennis Price
Attorneys for Plaintiff

Dated: July 10, 2017

LAW OFFICE OF KENNETH E.
CHYTEN

By: /s/Kenneth E. Chyten
Kenneth E. Chyten
Attorneys for Defendant

SIGNATURE ATTESTATION

Pursuant to Civil L.R 5-4.3.4(a)(2)(i), I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in this document's content and have authorized the filing of this document with the use of their electronic signature.

Dated: July 11, 2017

CENTER FOR DISABILITY ACCESS

By: /s/Dennis Price

Dennis Price

Attorneys for Plaintiff